

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEVEN TILCHEN

Plaintiff,

v.

CEMD ELEVATOR CORP. d/b/a CITY
ELEVATOR, MITCHELL HELLMAN,
STEPHA DIEMER, CARL ALONGIS and
KONE, INC.,

Defendants

Case No. 17-CV-00051 (PAC)

**DECLARATION OF
ETHAN A. BRECHER IN
SUPPORT OF
PLAINTIFF'S MOTION
FOR SUMMARY
JUDGMENT**

ETHAN A. BRECHER, an attorney duly admitted to the practice in the courts of this State, hereby declares as follows:

1. I am an attorney admitted to practice in the State of New York and the managing partner of the Law Office of Ethan A. Brecher, LLC located at 600 Third Avenue, 2nd Floor, New York, New York, 10016. I represent the Plaintiff Steven Tilchen ("Plaintiff" or "Tilchen") in the above-captioned action. I am fully familiar with the facts and circumstances stated herein and I respectfully submit this declaration in support of Plaintiff's Motion for Summary Judgment seeking dismissal of Defendants' CEMD Elevator Corp. d/b/a City Elevator ("CEMD"), Mitchell Hellman ("Hellman"), Stephan Diemer ("Diemer") and Carl Alongis ("Alongis")(collectively

the “Defendants”) sole tortious interference counterclaim against Tilchen pursuant to Fed. R. Civ. P. 56.

2. Tilchen commenced this action on January 4, 2017 by filing his Complaint (DE 1) and filed a Second Amended Complaint on July 31, 2017 (DE 54).

3. The Defendants filed their Answer to Plaintiff’s Second Amended Complaint with Counterclaims on September 7, 2017 (DE 64). The Defendants’ sole claim against Tilchen is “tortious interference with contract” for contracts allegedly between CEMD and its customers.

4. Tilchen filed his Answer to the Defendants’ counterclaim on September 8, 2017 (DE 65).

5. The parties engaged in discovery and all fact discovery was due by March 31, 2018.

6. Defendant KONE Inc. (“KONE”) mailed a copy of the asset purchase agreement executed between CEMD and KONE on July 28, 2016 (the “APA”) to Tilchen’s former counsel. A true and correct copy the letter and the enclosed APA is attached as Exhibit 1.

7. KONE produced Revised Schedule 1.01(a) and Revised Schedule 1.01(b) to the APA, which list the Assumed Maintenance Contracts purchased by KONE from CEMD. A true and correct copy is attached as Exhibit 2.

8. KONE produced Revised Schedule 1.01(f) of the APA, which list the WIP Contracts purchased by KONE from CEMD. A true and correct copy is attached as Exhibit 3.

9. KONE produced the Assignment and Assumption Agreement between Kone and CEMD, executed on August 31, 2016. A true and correct copy is attached as Exhibit 4.

10. On August 27, 2018, counsel for Defendants filed a letter requesting a pre-motion conference regarding Defendants’ motion for summary judgment (DE 93). The Defendants

stated that they sought to file a motion for summary judgment in favor of their tortious interference counterclaim. The Defendants also stated that “Plaintiff produced thirteen contracts, which he executed as a principal of, Keystone Iron & Wire Corp., a competing entity. These thirteen contracts were all with CEMD’s customers who had ongoing contracts with CEMD.”

11. Tilchen produced agreements between Keystone Iron & Wire Works, Inc. (“Keystone”) and sixteen former KONE customers for elevator maintenance.

12. A true and correct copy of the Keystone contract for equipment located at 1273 East 58th St., BK, NY 11234 with owner/agent The Guild for Exceptional Children is attached as Exhibit 5.

13. A true and correct copy of the Keystone contract for equipment located at 260 68th St., BK, NY 11220 with owner/agent The Guild for Exceptional Children is attached as Exhibit 6.

14. A true and correct copy of the Keystone contract for equipment located at 33 Washington St., Lawrence, NY 11559; 44 Front St., Lawrence, NY; 385 Central Ave., Lawrence, NY; & 635 Central Ave. Cedarhurst, NY 11516 with owner/agent Hebrew Academy of the Five Towns is attached as Exhibit 7.

15. A true and correct copy of the Keystone contract for equipment located at 306 East 59th Street, NY, NY with owner/agent Humane Society of New York is attached as Exhibit 8.

16. A true and correct copy of the Keystone contract for equipment located at 620 Central Ave., Cedarhurst, NY 11516 with owner/agent Kulanu Academy is attached as Exhibit 9.

17. A true and correct copy of the Keystone contract for equipment located at 340 East 54th Street, NY, NY with owner/agent Neighborhood Playhouse is attached as Exhibit 10.

18. A true and correct copy of the Keystone contract for equipment located at 165 North Village Ave., 30 Hempstead Ave., RVC, NY 11570 with owner/agent RVC Association LP c/o Rhodes Management is attached as Exhibit 11.

19. A true and correct copy of the Keystone contract for equipment located at 801 Amsterdam Ave., NY, NY with owner/agent Ryan Center is attached as Exhibit 12.

20. A true and correct copy of the Keystone contract for equipment located at 53 East 80th Street, NY, NY 10075 with owner/agent Sagansky Residence is attached as Exhibit 13.

21. A true and correct copy of the Keystone contract for equipment located at 1300 Club Drive, Hewlett, NY 11557 with owner/agent Seawane County Club is attached as Exhibit 14.

22. A true and correct copy of the Keystone contract for equipment located at 20 Greene Street, NY, NY with owner/agent T. George Realty is attached as Exhibit 15.

23. A true and correct copy of the Keystone contract for equipment located at 4 East 39th Street, NY, NY with owner/agent The Berkshire Bank is attached as Exhibit 16.

24. A true and correct copy of the Keystone contract for equipment located at 229 East 24th Street, N.Y. with owner/agent Brookefield Condominiums is attached as Exhibit 17.

25. A true and correct copy of the Keystone contract for equipment located at 146 Chambers Street, NY, NY with owner/agent Jordan Cooper Real Estate is attached as Exhibit 18.

26. A true and correct copy of a maintenance contract between Keystone and Joseph Neto & Associates/Project Renewal for equipment located at 215-225 East 45th Street, NY, NY 10017 is attached as Exhibit 19.

27. A true and correct copy of the unexecuted Keystone contracts for equipment located at 185 Varick Street, NY, NY with owner/agent Varick Realty is attached as Exhibit 20.

28. CEMD produced contracts between CEMD and customers typically identified by the location of the equipment to be serviced.

29. A true and correct copy of the CEMD contract for equipment located at 53 East 80th Street, NY, NY 10075 is attached as Exhibit 21.

30. A true and correct copy of the CEMD contract for equipment located at 801 Amsterdam Ave., NY, NY is attached as Exhibit 22.

31. A true and correct copy of the CEMD contract for equipment located at 185 Varick Street, NY, NY is attached as Exhibit 23.

32. A true and correct copy of the CEMD contract for equipment located at 306 East 59th Street, NY, NY is attached as Exhibit 24.

33. A true and correct copy of the CEMD contract for equipment located at 1273 East 58th St., BK, NY 11234 is attached as Exhibit 25.

34. A true and correct copy of the CEMD contract for equipment located at 260 68th St., BK, NY 11220 is attached as Exhibit 26.

35. A true and correct copy of the CEMD contract for equipment located at 4 East 39th Street is attached as Exhibit 27.

36. A true and correct copy of the CEMD contract for equipment located at 620 Central Ave., Cedarhurst, NY 11516 is attached as Exhibit 28.

37. A true and correct copy of the CEMD contract for equipment located at 165 North Village Ave., 30 Hempstead Ave., RVC, NY 11570 is attached as Exhibit 29.

38. A true and correct copy of the CEMD contract for equipment located at 635 Central Ave. Cedarhurst, NY 11516 is attached as Exhibit 30.

39. A true and correct copy of the CEMD contract with Seawane Country Club is attached as Exhibit 31.

40. A true and correct copy of the CEMD contract with Neighborhood Playhouse is attached as Exhibit 32.

41. A true and correct copy of the CEMD contract for equipment located at 20 Greene Street, NY, NY 10013 is attached as Exhibit 33.

42. Upon information and belief, CEMD did not produce contracts with customers identified in the Keystone agreements as owner/agent: Jordan Cooper Real Estate, Project Renewal, or Brookefield Condominiums.

43. KONE produced Amendment 1 No. the Asset Purchase Agreement executed by CEMD and KONE on February 12, 2018 (“the Amendment”). Two exhibits to the Amendment list former CEMD contracts which were cancelled. A true and correct copy of the Amendment and the provided exhibits is attached as Exhibit 34.

44. Hellman was deposed on November 21, 2017. A true and correct copy of excerpts of the transcript of his deposition is attached as Exhibit 35.

45. CEMD produced a list of CEMD contracts which Hellman testified were contracts that Tilchen allegedly tortiously interfered (the “Hellman List”). A true and correct copy of the Hellman List is attached as Exhibit 36.

46. In KONE’s Answers to Plaintiff’s Second Set of Interrogatories, dated March 13, 2018, KONE stated that all of the contracts listed on the Hellman List were cancelled, with the exception of the contract for 119 Chambers Street. Kone stated that it could not find a record of any such contract or cancellation. A true and correct copy of Kone’s Answers to Plaintiff’s Second Set of Interrogatories is attached as Exhibit 37.

47. Diemer was deposed on January 4, 2018. A true and correct copy of excerpts of the transcript of his deposition is attached as Exhibit 38.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
February 5, 2019

Respectfully submitted,

/s/ Ethan A. Brecher

ETHAN A. BRECHER (EB 3425)

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